

MONTANA LEGISLATIVE HISTORY

Chapter 440 19 87

Bill H _____ S 139

Original bill & history X c

H. Committee on JUDICIARY

Hearing Date(s) 3/20 X c

EXEC ACTION 3/23 X c

_____ c

_____ c

Date Out 3-24 _____ c

S. Committee on FISH & GAME

Hearing Date(s) 1/29 X c

EX EXEC ACTION _____ c

S. Judiciary 2-3 _____ c

2-18 _____ c

2-19

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

S. JUDICIARY:

2/18 HEARINGS

2/19 EXECUTIVE ACTION

SB 135 INTRODUCED BY BISHOP
EXEMPTS RELOCATION OF COMMON BOUNDARY LINE FROM
SUBDIVISION AND PLATTING ACT

1/19 INTRODUCED
1/19 REFERRED TO LOCAL GOVERNMENT
1/22 HEARING
1/29 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/02 2ND READING PASSED 49 0
2/04 3RD READING PASSED 50 0

TRANSMITTED TO HOUSE
2/11 REFERRED TO LOCAL GOVERNMENT
3/06 HEARING
3/11 COMMITTEE REPORT--BILL NOT PASSED
3/12 ADVERSE COMMITTEE REPORT ADOPTED 67 1
3/12 RETURNED TO SENATE NOT CONCURRED

SB 136 INTRODUCED BY MAZUREK, LYNCH, HARPER, ET AL.
FULL BENEFITS FOR EMPLOYEES WITH HOURS REDUCED DUE
TO BUDGET DEFICIT

1/19 INTRODUCED
1/19 REFERRED TO LABOR & EMPLOYMENT RELATIONS
1/20 FISCAL NOTE REQUESTED
2/05 FISCAL NOTE RECEIVED
2/12 HEARING
2/18 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/20 2ND READING PASSED 48 1
2/23 3RD READING PASSED 49 0

TRANSMITTED TO HOUSE
2/24 REFERRED TO STATE ADMINISTRATION
3/10 HEARING
3/17 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
3/20 2ND READING CONCURRED 94 3
3/21 3RD READING CONCURRED 92 4

RETURNED TO SENATE WITH AMENDMENTS
3/24 2ND READING AMENDMENTS CONCURRED 49 0
3/25 3RD READING AMENDMENTS CONCURRED 49 0
3/28 SIGNED BY PRESIDENT
3/28 SIGNED BY SPEAKER

3/28 TRANSMITTED TO GOVERNOR
4/02 SIGNED BY GOVERNOR
CHAPTER NUMBER 328 EFFECTIVE DATE: 4/02/87

SB 137 INTRODUCED BY WEEDING
FEE ADDED TO FINES TO SUPPORT LAW ENFORCEMENT
ACADEMY

1/19 INTRODUCED
1/19 REFERRED TO JUDICIARY
1/20 FISCAL NOTE REQUESTED
1/23 FISCAL NOTE RECEIVED
1/26 HEARING
2/20 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/23 2ND READING PASS MOTION FAILED 17 32
2/23 2ND READING INDEFINITELY POSTPONED 32 16

SB 138 INTRODUCED BY HAGER, NORMAN, WINSLOW
SUNRISE FOR LICENSING BOARDS

1/19 INTRODUCED
1/19 REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY
1/20 FISCAL NOTE REQUESTED
1/20 FISCAL NOTE RECEIVED
1/26 HEARING
2/03 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/06 2ND READING PASSED 25 22
2/07 TAKEN FROM 3RD READING AND PLACED
ON 2ND READING 30 19
2/09 2ND READING PASSED 27 21
2/11 3RD READING PASSED 28 19

TRANSMITTED TO HOUSE
2/18 REFERRED TO BUSINESS & LABOR
3/06 HEARING
3/06 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
3/09 2ND READING CONCURRED AS AMENDED 73 23
3/11 3RD READING CONCURRED 84 14

RETURNED TO SENATE WITH AMENDMENTS
3/20 2ND READING AMENDMENTS CONCURRED 49 0
3/21 3RD READING AMENDMENTS CONCURRED 37 4
3/24 SIGNED BY PRESIDENT
3/25 SIGNED BY SPEAKER

3/25 TRANSMITTED TO GOVERNOR
3/29 SIGNED BY GOVERNOR
CHAPTER NUMBER 266 EFFECTIVE DATE: 10/01/87

SB 139 INTRODUCED BY SMITH, E., CAMPBELL, TVEIT, ET AL.
RESTRICT SNOWMOBILE AREA OPERATORS' LIABILITY

1/19 INTRODUCED
1/19 REFERRED TO FISH & GAME
1/29 HEARING
1/30 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/03 REREFERRED TO JUDICIARY
2/18 HEARING
2/19 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/21 2ND READING PASSED 49 0
2/23 3RD READING PASSED 49 0

TRANSMITTED TO HOUSE
2/24 REFERRED TO JUDICIARY
3/20 HEARING
3/23 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
3/25 REREFERRED TO JUDICIARY
3/27 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
3/28 2ND READING CONCURRED 79 2
3/30 3RD READING CONCURRED 97 1

RETURNED TO SENATE WITH AMENDMENTS
4/02 2ND READING AMENDMENTS CONCURRED 49 0
4/03 3RD READING AMENDMENTS CONCURRED 48 0
4/06 SIGNED BY PRESIDENT
4/07 SIGNED BY SPEAKER

4/07 TRANSMITTED TO GOVERNOR
4/09 SIGNED BY GOVERNOR
CHAPTER NUMBER 440 EFFECTIVE DATE: 4/09/87

SB 140 INTRODUCED BY MAZUREK
INCREASING DEPOSIT IN LOAN LOSS RESERVE FUND BY

SENATE BILL NO. 139

INTRODUCED BY E. SMITH, CAMPBELL, TVEIT, KOLSTAD, NATHE,
HARDING, BECK, LYNCH, STIMATZ, MANNING, BOYLAN, NISBET,
MEYER, IVERSON, DONALDSON, SWIFT, O'CONNELL, KOEHNKE, HARP,
STRIZICH, QUILICI, PAVLOVICH, MILLER, MENAHAN, BRANDEWIE,
WALKER, HOFMAN, DAILY, RAMIREZ, POULSEN, PHILLIPS, STORY,
GRADY, HALLIGAN, THOFT, SEVERSON,
MCCORMICK, WALLIN, JACOBSON

IN THE SENATE

JANUARY 19, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON FISH & GAME.
JANUARY 30, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 31, 1987	PRINTING REPORT.
FEBRUARY 3, 1987	ON MOTION, TAKEN FROM SECOND READING AND REREFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 19, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1987	PRINTING REPORT.
FEBRUARY 21, 1987	SECOND READING, DO PASS.
FEBRUARY 23, 1987	ENGROSSING REPORT. THIRD READING, PASSED. AYES, 49; NOES, 0. TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 24, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 23, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.

MARCH 25, 1987

ON MOTION, TAKEN FROM SECOND READING
AND REREFERRED TO COMMITTEE
ON JUDICIARY.

MARCH 27, 1987

COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 28, 1987

SECOND READING, CONCURRED IN.

MARCH 30, 1987

THIRD READING, CONCURRED IN.
AYES, 97; NOES, 1.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 2, 1987

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 3, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1 *Separate* BILL NO. *139* *WATTS*
 2 INTRODUCED BY *E. Smith Campbell Street Heart*
 3 *Harding Beck Simpson Stuart Richard Manning*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE *Boyle*
 5 RESPONSIBILITY AND LIABILITY OF SNOWMOBILE AREA OPERATORS *Conrad Lee Smith*
 6 AND THE RESPONSIBILITY AND RISK BORNE BY SNOWMOBILERS; *Ramirez*
 7 AMENDING SECTIONS 27-1-701 AND 70-16-302, MCA; AND PROVIDING *Shelly*
 8 AN IMMEDIATE EFFECTIVE DATE." *Waller* *1/16/...*
 9 *Waller*
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: *Halligan*
 11 NEW SECTION. Section 1. Purpose. The legislature *Boyle*
 12 recognizes that there are inherent risks in the sport of *Conrad Lee Smith*
 13 snowmobiling that are essentially impossible for a *McLanahan*
 14 snowmobile area operator to eliminate but that should be *Waller*
 15 known by a reasonable and prudent snowmobiler. The purpose
 16 of [this act] is to define those areas of responsibility and
 17 the acts for which a snowmobile area operator is liable for
 18 death or injury to any person or property and those risks
 19 for which a snowmobiler expressly assumes or must be
 20 considered to have voluntarily assumed the risk of death or
 21 injury and for which there can be no recovery.
 22 NEW SECTION. Section 2. Definitions. As used in [this
 23 act], the following definitions apply:
 24 (1) "Snowmobile" means a vehicle defined in
 25 23-2-601(10).

1 (2) "Snowmobile area" means those areas designated as
 2 snowmobile trails or areas open to the operation of
 3 snowmobiles.

4 (3) "Snowmobile area operators" means those persons
 5 responsible for the maintenance of snowmobile trails and
 6 open areas or those persons providing rental snowmobile
 7 equipment. Operators may include but are not limited to the
 8 United States forest service, the Montana department of
 9 fish, wildlife, and parks, the Montana snowmobile
 10 association, individual snowmobile clubs, persons who offer
 11 snowmobile equipment for rent, and private trail grooming
 12 contractors.

13 (4) "Snowmobiler" means any person operating or riding
 14 a snowmobile.

15 NEW SECTION. Section 3. Snowmobile area operators --
 16 duties -- restriction on liability. (1) The person
 17 responsible for the maintenance of or operation of a
 18 snowmobile area shall mark all trail maintenance vehicles
 19 and furnish the vehicles with flashing or rotating lights
 20 that must be in operation whenever the vehicles are working
 21 or are in movement in the snowmobile area.

22 (2) A snowmobile area operator is liable for death or
 23 injury to a snowmobiler or other person or property only for
 24 an act or omission that constitutes willful or wanton
 25 misconduct.

(3) Except as provided in this section, a snowmobile area operator has no duty to eliminate, alter, control, or lessen the risk inherent in the sport of snowmobiling. A snowmobile area operator who attempts to eliminate, alter, control, or lessen the risk inherent in the sport of snowmobiling is liable only for an act or omission that constitutes willful or wanton misconduct.

NEW SECTION. Section 4. Snowmobiler's assumption of responsibility -- duties. (1) A snowmobiler assumes the risk and all legal responsibility for death or injury to himself or other persons or property that results from participating in the sport of snowmobiling by virtue of his participation. The assumption of risk includes but is not limited to death or injury caused by the following: variations in terrain, surface or subsurface snow or ice conditions, cornices, avalanches, poor visibility, bare spots, rocks, trees, other forms of forest growth or debris, and plainly marked trail maintenance equipment.

(2) A snowmobiler is responsible for:

(a) knowing the range of his own ability to snowmobile any slope, trail, or area and for snowmobiling within the limits of his ability considering the conditions;

(b) maintaining control of his speed and course at all times while snowmobiling;

(c) heeding all posted warnings; and

(d) refraining from acting in a manner that may cause or contribute to the injury of anyone.

NEW SECTION. Section 5. Maintenance of rental snowmobiles. A person who engages in the business of renting snowmobiles to another shall:

(1) maintain rental snowmobiles in a safe condition;

(2) offer each renter instructions in the operation of the rental snowmobile; and

(3) make available to each renter maps or information on trails in the area.

NEW SECTION. Section 6. Effective comparative negligence. Notwithstanding any comparative negligence law in this state, a person is barred from recovery from a snowmobile area operator for death or injury to person or property resulting from any risk inherent in the sport of snowmobiling as described in [section 4].

Section 7. Section 27-1-701, MCA, is amended to read:

"27-1-701. Liability for negligence as well as willful acts. Everyone Except as otherwise provided by law, everyone is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want of ordinary care brought the injury upon himself."

Section 8. Section 70-16-302, MCA, is amended to read:

1 "70-16-302. Restriction on liability to permittee.
2 (1) A landowner or tenant who permits, by act or
3 implication, any person to enter upon any property in the
4 possession or under the control of such landowner or tenant
5 for any recreational purpose without accepting a valuable
6 consideration therefor does not by granting such permission
7 extend any assurance that such property is safe for any
8 purpose or confer upon such a person the status of invitee
9 or licensee to whom any duty of care is owed, and such
10 landowner or tenant shall not be liable to such person for
11 any injury to person or property resulting from any act or
12 omission of such landowner or tenant unless such act or
13 omission constitutes willful or wanton misconduct.

14 (2) The department of fish, wildlife, and parks, when
15 operating under an agreement with a landowner to provide
16 recreational opportunities subject to the provisions of
17 subsection (1) on the landowner's property, does not extend
18 any assurance that such property is safe for any purpose,
19 and the department may not be liable to any person for any
20 injury to person or property resulting from any act or
21 omission of the department unless such act or omission
22 constitutes willful or wanton misconduct."

23 NEW SECTION. Section 9. Two-thirds vote required.
24 Since this act limits governmental liability, Article II,
25 section 18, of the Montana constitution requires a vote of

1 two-thirds of the members of each house for passage.

2 NEW SECTION. Section 10. Effective date. This act is
3 effective on passage and approval.

-End-

MONTANA STATE SENATE

FISH AND GAME COMMITTEE

* * * * *

50TH LEGISLATURE

* * * * *

COMMITTEE MEMBERS:

SENATOR ED SMITH, CHAIRMAN
SENATOR WILLIAM YELLOWTAIL,
VICE - CHAIRMAN
SENATOR AL BISHOP
SENATOR ELMER SEVERSON
SENATOR ESTHER BENGTON
SENATOR JUDY JACOBSON
SENATOR JOHN ANDERSON
SENATOR GREG JERGSON

STAFF:

ANDREA MERRILL

COMMITTEE SECRETARY:

MARY FLORENCE ERVING-ROOT

* * * * *

BOOK:

1 of 1

INCLUSIVE DATES:

January 10, 1987 through March 31, 1987

NORMAL SCHEDULE==> SITE: ROOM 402

DAYS: T-T-S

TIME: 1:00 P.M.

~~SECRETARY MARY FLORENCE ROOT~~

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0053	1/06	1/22	1-22, 2-3	PASS AS AMENDED		2-3
SMITH, ED B. ELIMINATE PRIVATE PROPERTY RIGHTS IN WILD FUR-BEARING ANIMALS						
SB0062	1/07	1/22	1-22, 1-27		TABLED	
GAGE, DELWYN ALLOW DISABLED PERSON TO USE CROSSBOW DURING ARCHERY SEASON						
SB0081	1/12	1/20	1-20, 1-27	ADVERSE REPORT		1-27
WEEDING, CECIL COMMERCIAL FISHING OF CISCO						
SB0107	1/15	1/29	1-29, 2-3	ADVERSE REPORT		2-3
FARRELL, WILLIAM E. SAFETY CRITERIA FOR NO-SHOOTING AREAS						
SB0109	1/15	1/29	1-29	DO PASS		1-29
BISHOP, AL AUCTION OF SHIRAS MOOSE LICENSE						
SB0139	1/19	1/29	1-29, 2-3	PASS AS AMENDED	JUDICIARY	2-3
SMITH, ED B. RESTRICT SNOWMOBILE AREA OPERATORS' LIABILITY						
SB0171	1/21	2/03	2-3, 2-10	PASS AS AMENDED		2-10
YELLOWTAIL JR, WILLIAM P. SEPARATE UPLAND GAME BIRD AND WATERFOWL LICENSES						
SB0172	1/21	2/03	2-3	DO PASS		2-3
YELLOWTAIL JR, WILLIAM P. PURCHASE OF HUNTING LICENSES FOR FAMILY MEMBERS						
SB0177	1/21	2/10	2-10	PASS AS AMENDED		2-10
YELLOWTAIL JR, WILLIAM P. REVISE AND CONTINUE NONGAME WILDLIFE CHECKOFF						
SB0219	1/24	2/12	2-12, 2-17, 2-19	DO PASS		2-19
MEYER, DARRYL LANDOWNER PREFERENCE FOR SPECIAL ELK PERMIT						
SB0243	1/29	2/10	2-10, 2-17	PASS AS AMENDED		2-17
VAUGHN, ELEANOR NONRESIDENT BOATING PERMIT						

SENATE FISH AND GAME COMMITTEE

January 29, 1987

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Senator Smith queried Marcoux concerning mountain sheep pre-liver flukes. Smith asked if an investigation had taken place to take care of the liver fluke problem. Marcoux reported the liver fluke is a viral problem and treatment of the sheep is being conducted by the department through a special disease center. Blood testing procedures are being implemented.

DISPOSITION OF SENATE BILL 109:

Senator Severson moved that the committee recommend a DO PASS on SB 109. The motion passed unanimously.

Senator Yellowtail replaced Senator Smith as chairman of the committee at this time.

CONSIDERATION OF SENATE BILL 139: Senator Ed Smith, Senate District No. 10, sponsor of the bill, stated that snowmobile and private property issues must be addressed with this legislation. Tourism is an important industry in Montana. The bill was introduced because of the liability suit against the Fish, Wildlife and Parks Department. After the bill was introduced, Smith stated he had been contacted by snowmobilers and private landowners who then stated unless the same protection given to the private landowner as is given to the Fish, Wildlife and Parks Department, a lot of private property will be closed to snowmobiling. Snowmobilers come from all over Montana, United States and Canada to take advantage of the snowmobile offered in Montana. Many times the snowmobilers must cross private property in order to reach the public access areas groomed by the Fish, Wildlife and Parks Department. If recreational snowmobiling is to continue, both issues must be addressed with this bill.

PROPOSERS

Ken Hoovestol, chairman of the legislative committee for the Montana Snowmobile Association, stated that the bill is designed and drafted after the Skiers Responsibility Act of 1979. The bill basically exempts the people involved in maintaining trails from liability except for willful or wanton acts. Hoovestol stated that major changes have been made in grooming programs in signing programs which have been exhilarated. Berms are no longer placed on the end of the trails. Hoovestol gave an overview of the amendments. (Exhibit 2)

Bob Nelson, Chairman of the Board of Directors of the Great Snowmobilers Incorporated, stated that the organization has had difficulty obtaining liability insurance coverage. Their committee had been semisuccessful in obtaining the needed coverage.

SENATE FISH AND GAME COMMITTEE
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Page 3

which was to include any incidents on the groomed trail. After paying \$500, the organization realized that the policy covered only the groomer himself who was already insured by the state of Montana. The policy also included special events. The policy did not insure anything such as incidents or liability on the trail, and the organization was able to get the money back. The Great Falls Snowmobilers Incorporated made a concentrated effort to obtain liability insurance for the trails and have been unsuccessful. Twenty-four insurance inquiries were sent to underwriters, fourteen responses were received with negative information, and the remaining responses were thought to be negative also. Nelson stands in favor of Senate Bill 139.

Dick Johnson, Deputy Director of the Fish, Wildlife and Parks, presented written testimony in support. (Exhibit 3)

Dr. George Eusterman, district representative for the Montana Snowmobile Association, member and safety instructor for the Great Falls Snowmobilers Incorporated, and medical director of Mountain Patrol Search and Rescue stated that he would like to feel that he represents the largest special interest group in the state of Montana. Eusterman stated the biggest problem regarding income from Montana tourism is the liability problem. The exaggerated settlements, liability insurance fees and/or no liability policies available at all are the cause of the problems. People must be responsible for their own actions. Montana cannot afford to have more businesses fail because of liability problems and still expect new businesses to come into the state. Montana cannot allow volunteer clubs, groups, and associations to dissolve by the threats of unreasonable law suits.

Dennis Ogl, Montana Snowmobile Association, Helena's district director representing two clubs that maintain private trails stated that there are approximately thirty grooming projects that are administered by the Fish, Wildlife and Parks Department. There are over two thousand miles of snowmobile trails being maintained in Montana. The major concern of liability coverage has been emphasized by the ruling in Flathead County liability case. Landowners who have given previous permission to groom trails and establish certain private property areas for snowmobiling are concerned about liability. Operators should be held accountable for their own actions when operating the snowmobiles in the natural environment. (Exhibit 3-A)

Clyde Sealy, West Yellowstone, Montana Rental Operator, stated that he and a partner own and operate five motels, two restaurants a guest ranch, a Minimart and a gas station. They also operate over one hundred eighty snowmobile rentals. Sealy stated the winter economy of West Yellowstone is anchored to the snowmobile industry. Without insurance, Sealy stated, liability risk is

equivalent to \$4 million. Liability insurance could not be obtained in 1986. Currently, they are operating with insurance that covers only professional guided snowmobile tours. Ten thousand people will enjoy Yellowstone Park on snowmobiles this season. These people are offered individual operating instructions, maps, and safety hints. Sealy stated that he believes the snowmobiler needs to be made responsible for his own acts when one accepts the responsibility of driving a snowmobile.

Marvin Hammer, district representative for the Montana Snowmobile Association, Missoula, presented the committee written testimony in favor of SB 139. (Exhibit 4)

Dave Seyfert, Flathead Valley Sno Club, Montana Snowmobile Association, Kalispell, stated that they have had a major grooming area behind Big Mountain for many years. This area included three major trail heads. Since the lawsuit decision last fall, only one trail head is currently being groomed because some of the property is on Stoltz' land. Seyfert supports action on SB 139 so all the trails can be maintained.

Bob Didrikson, Lincoln, MT., representing the Ponderosa Snowmobile Club, stated that the club has not been able to obtain liability insurance except on the clubhouse. Didrikson stated that the club has approximately two hundred miles of trails that can be groomed for snowmobiling. Didrikson stands in favor of SB 139.

Bob Bushnell, Montana Snowmobile Association president, Helena, stated the Montana snowmobile clubs need this bill with the amendments.

Everett E. Wooderd, representing the Missoula Snoggoers, presented written testimony in favor of SB 139. (Exhibit 5)

Doug Abelins, Cut Bank Sno Goers, Cut Bank, Montana, presented written testimony in favor of SB 139. (Exhibit 6)

Bill Howell, West Yellowstone, MT., businessman, stated that liability insurance coverage was obtained three years ago for \$500,000 per year at the rate of \$35 per machine. Two years ago the rates went to \$500 per machine, but only on machines that were rented for guided tours. Last year there was no insurance available whatsoever. The businesses were operated in the hope that there would be no liability suits against our businesses. Liability insurance was obtained this year at a much higher cost: \$200 per machine. Howell stated that he is in charge of the West Yellowstone grooming program, and cannot get liability insurance at this time. Howell stands in favor of SB 139.

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OPPONENTS

There were no opponents to SB 139.

QUESTIONS FROM THE COMMITTEE:

Senator Severson asked Howell how SB 139 affects snowmobiles operating in Yellowstone Park. Howell replied that liability insurance is needed. During the period of time that the insurance could not be obtained, Senator Melcher and Representative Williams obtained exemptions from the U.S. Forest Service since permits were required to operate the snowmobiles in national forests and these permits required liability insurance. Mr. Howell stated that the bill will make people responsible for their actions. The businesses are located in West Yellowstone, and Howell thought that the Montana law would set precedent for the surrounding states.

Senator Yellowtail asked John Maynard about comparative negligence of tort claim situations in regard to coordination with Senate Bill 51. Maynard stated the Tort Claim Division of the Department of Administration stands in favor of the bill to limit liability. Maynard offered to compare SB 139 and SB 51.

Senator Smith said the bill came to the committee because it addressed a fish and game issue. Should the bill receive a DO PASS, Smith stated that bill may be transferred to another committee. Senator Al Bishop stated that the bill should be sent to the Judiciary committee so that the bills could be coordinated.

In closing, Senator Smith explained that President Norman was aware of the fact that, if private landowners were to be included in SB 130, the committee would direct the bill to the Senate Judiciary committee. Judging from the testimony, Senator Smith stated that the inability to obtain liability insurance has caused serious problems to Montana tourism. Unless something positive is done this session, vast amounts of private land will be closed to snowmobiling because of the high liability costs, and businesses and private individuals will lose what they have worked their lives to obtain. These issues must be addressed.

Senator Yellowtail returned the gavel to Senator Smith.

DISPOSITION OF SENATE BILL 139:

Senator Jergeson addressed the need for an amendment that would insert "landowners or their tenants." The amendment would also include punctuation corrections.

There was no objection from the committee concerning the amendment. Senator Jergeson moved that the committee recommend a DO PASS on the amendment to SB 139. The motion passed unanimously.

Senator Jergeson moved that the committee recommend a DO PASS AMENDED on SB 139. The motion passed unanimously.

DISPOSITION ON SENATE BILL 109:

Senator Jergeson moved the Statement of Intent be included with SB 109. The DO PASS motion passed unanimously.

CONSIDERATION OF SENATE BILL 107:

Senator William Farrell, Senate District No. 31, sponsor of the bill stated the bill's intent is to clarify the law and proper adoption of rules. Line thirteen of the amendment strikes the word "may" and inserts "shall." In adopting the rules on restriction of firearms, consideration of population density, type of terrain, nature and extent of the use of the area will be taken into consideration, as well as the interest of public health, safety, and the protection of private property. If the judgment call revealed a need, the people living in the area could establish their needs according to the developed criteria.

PROPONENTS

Alice Austin, 4741 Sundown Road, Missoula, MT., representing a citizen petition group, stated that the group seeks to close a section of the Bitterroot River bottom to hunting and discharge of firearms. The group includes residents of the area and people who use the area for recreation. The effort is supported by the University of Montana, the Missoula High School district, the Missoula Country Club, and the Larchmont Municipal Golf Course. Ms. Austin presented written testimony. (Exhibit 7)

David Lackman, Montana Public Health Association, Helena, testified in support of SB 107 as amended. Public safety is of great concern and the association has been concerned at the failure of the Fish, Wildlife and Parks Dept. to act in a decisive manner.

Dick Johnson, Deputy Director of the Fish, Wildlife and Parks Department, gave written testimony in support of SB 107. (Exhibit 8)

OPPONENTS

There were no opponents to SB 107.

ROLL CALL

SENATE COMMITTEE--FISH AND GAME

50TH LEGISLATIVE SESSION - 1987

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Date: January 29, 1987

NAME	PRESENT	ABSENT	EXCUSED
Senator Ed Smith, Chairman	X		
Senator John Anderson	X		
Senator Judy Jacobson	X		
Senator Elmer Severson	X		
Senator Greg Jergeson	X		
Senator Al Bishop	X		
Senator Esther Bengtson	X		
Senator Wm. Yellowtail Vice-Chair	X		

SENATE

Fish & Game

COMMITTEE

BILL SB 107 SB 109

VISITORS' REGISTER

SB 139

DATE J

NAME	REPRESENTING AND Complete Address	BILL #	(CR. SUPP.)
Alice H. Austin	4741 Sandown Rd. Citizen Petition - Missoula	SB 107	
Boone M. Austin	" " "	"	
Scott Ross	Montana Hunters Assn. Box 5221, Helena 59601 Dept. Fish, Wildlife & Parks	SB 109	✓
Bob Lane	Dept. Fish, Wildlife & Parks	SB 107	
Dick Johnson	Dept. Fish, Wildlife & Parks	SB 139	
MARTIN SPETHMAN	Montana Trial Lawyers Assn.	SB 107	
RON MARCOUX	Dept. Fish Wildlife PARK	SB 139	
DAVID LACKMAN	Montana Public Health Assn 1400 L. H. H. Bldg.	SB 109	-
Senator Williams	Senator Williams	SB 107	✓
Charles Lutz	Snowmobile Club	SB 139	✓
Robert Thruswell	STATE AUDITOR	SB 139	✓
Tim Peal	Self	SB 139	
Bob Bushnell	Mt Snowmobile Assn	SB 139	✓
Dave Seyfert	Flathead Valley Snow Club	SB 139	✓
Dennis Ogle	Mt Snowmobile Assn	SB 139	✓
Diane Tripp	Mt Snowmobile Assn News	SB 139	✓
Bill Horrel	West Yellowstone	SB 139	✓
Ken Hoovestol	MT. Snowmobile Assn.	SB 139	✓
Bud Flaten	Missoula Mt Club Pres.	SB 139	✓
Everett Woodgerd	Missoula Mt. Snowmobile Assn	SB 139	✓
MARVIN HAMMER	Montana Snowmobile Assn	SB 139	✓
John Gillispie	Lincoln, MT.	SB 139	✓
Bob Hansen	Lincoln, MT.	SB 139	✓
Gil Schmaus	Gt. Falls Snowmobile Assn	SB 139	✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

COMMITTEE

Fish & Game

SENATE

SB 107 SB 109

VISITORS' REGISTER

DATE

JAN. 29

SB 139

Please note bill no.

BILL #
SUPPORT
(check one)
OPPOS

REPRESENTING

NAME

Bill Johnson Jr. Wild

Joseph Korte

George Stenberg

MT Wildlife-Evaluation Visitor

Great Falls Snowmobilers 139

MT Audubon League Fund

Great Falls 139

MT Wildlife-Evaluation Visitor

Great Falls Snowmobilers 139

MT Audubon League Fund

Great Falls 139

MT Wildlife-Evaluation Visitor

Great Falls Snowmobilers 139

MT Audubon League Fund

Great Falls 139

MT Wildlife-Evaluation Visitor

Great Falls Snowmobilers 139

MT Audubon League Fund

Great Falls 139

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE FISH AND GAME

EXHIBIT NO. 2

DATE 1-29-87

BILL NO. SB 139

AMENDMENTS TO SB 139

Houderstal Amendment

1. Page 2, line 10.

Following: "clubs,"

Insert: "landowners,"

2. Page 4, line 6.

Following: "condition;"

Insert: "and"

3. Page 4, line 7.

Following: " in the"

Insert: "mechanical"

4. Page 4, lines 8 through line 10.

Following: "snowmobile"

Strike: remainder of line 8 through "area" on line 10

5. Page 5, line 19.

Following: "department"

Insert: " or the landowner"

SB 139
 January 29, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife and Parks

The Department supports this bill including the amendments offered by the sponsor and the State Snowmobile Association. As the state agency responsible for the management of snowmobile recreation in Montana, we applaud the initiative of the Association in its efforts to bring equity to the distribution of liability responsibility among participants and providers involved with recreational snowmobiling.

SB 139 is similar in concept and patterned after Section 23-2-736, MCA, the "Skiers Responsibility Law," which was passed in 1979. The bill recognizes the risks inherent in the sport of snowmobiling and requires that participants be responsible for their own acts. The allocation of a greater share of the risk involved in an inherently dangerous sport to the willful participants is sound public policy and is consistent with accepted restraint on tort liability in similar circumstances.

It does not absolve the Department, other agencies, landowners, or providers from responsibility for their acts, but does protect them from unreasonable liability. The standard of liability: willful or wanton misconduct, is the standard applied to landowners under the stream access statutes, Section 23-2-321, MCA, and to landowners who permit recreation on their property without consideration, Section 70-16-302, MCA.

Passage of SB 139 will help to ensure that unreasonable liability responsibilities will not deprive Montana snowmobilers of land, facilities, and groomed trails upon which to enjoy their sport.

My name is Dennis Gyle from Helena
represent M.S.D

SENATE FISH AND GAME

EXHIBIT NO. 3-A

DATE January 29, 1987

BILL NO. SB 139

Currently, there are ^{APPX}30 grooming projects
administered thru W.P. in Montana. ~~over~~ over 2000 miles
of groomed snowmobile trails are being maintained by
W.P. or local snowmobile clubs. The concern of
liability has been questionable, however with the
recent ruling in Hotchkiss County has brought new
emphasis to the liability issue. Land owners
who have given permission to groom trails and
establish parking areas on their property are concerned
about being held liable. Local clubs that are
maintaining these trail systems are concerned.

When operating a snowmobile in a natural environment
the operator should be accountable for their actions.

The snowmobile responsibility law would put some
of the responsibility on the operator of a snowmobile.

SENATE FISH AND GAME

EXHIBIT NO. 3-A

DATE 1-29-87

BILL NO. SB 139

SENATE FISH AND GAME

EXHIBIT NO. 4

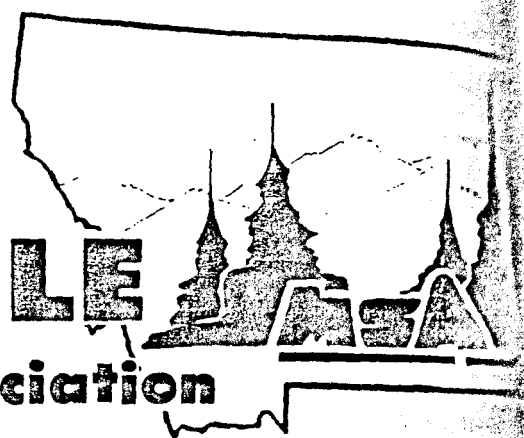
DATE Jan 37 1987

BILL NO. # 139

Montana

SNOWMOBILE

Association



Mr. Chairman and members of the Fish & Game Committee:

My name is Marvin Hammer from Missoula. I am a District Representative for the Montana Snowmobile Association. My District includes the snowmobile clubs in Ronan, Deborgia, Hamilton, Ovando, Seeley Lake and Missoula. The clubs are made up of approximately 400 family members.

Snowmobile clubs help generate the local economy in these areas through poker runs, guided trail rides, picnics and winter festivals. Snowmobile clubs depend on groomed trails for all of their outings. We now have 27 different communities that have grooming projects in operation.

Snowmobilers bring life and money into these communities that would otherwise have their doors closed during the winter months. Snowmobile clubs and officers are now very concerned about their sponsoring of events in fear of being sued. Some clubs have discontinued their activities because they have tried to get insurance and found it to be expensive.

Everything we do has an inherent risk. As concerned recreational snowmobilers we need to be responsible for actions as we enjoy our sport of snowmobiling.

Senate Bill 139 "Snowmobilers Liability and Responsibility Bill" is needed to help the Fish Wildlife and Parks, Forest Service, private land owners, snowmobile clubs and grooming operators to continue to maintain the quality snowmobiling and snowmobile trails that we have in our state.

Thank you.

Missoula

FISH AND GAME

Snowgoers

611 Livingston Ave.
Missoula, Montana 59801



STATEMENT BEFORE FISH & GAME COMMITTEE---JANUARY 29, 1987---SB-139

1. CHAIRMAN & MEMBERS OF THE COMMITTEE---MY NAME IS EVERETT E. WOODGERD---I REPRESENT OVER 200 FAMILY MEMBERS OF THE MISSOULA SNOWGOERS.

2. WINTER RECREATIONISTS, WE ARE VERY DEPENDENT UPON LARGE PRIVATE LANDOWNERS. WE USE THEIR LOGGING ROADS AND CLEARCUTS EXTENSIVELY, AS DO OTHER RECREATIONISTS SUCH AS HUNTERS AND SKIERS.

3. SNOWMOBILERS, WE WANT TO ASSURE THESE LANDOWNERS THAT THEY WILL IN NO WAY BE HELD RESPONSIBLE FOR INJURIES THAT MAY OCCUR WHILE WE ARE THEIR GUESTS.

4. SNOWMOBILING IS NOT A DANGEROUS SPORT--BUT THERE IS AN ELEMENT OF RISK INVOLVED--NOT THE SAME AS WHEN OPERATING AN AUTOMOBILE.

5. I HAVE SNOWMOBILED EXTENSIVELY FOR 18 YEARS--AND NO ONE IN MY PARTY HAS HAD ANY SERIOUS DIFFICULTY--UNTIL 2 WEEKS AGO SATURDAY--WHEN ONE OF OUR GROUP CRASHED INTO A TREE--AND WAS KILLED. HE WAS GIVEN CPR AND MOUTH TO MOUTH RESUSCITATION UNTIL THE LIFE-FLITE HELICOPTER ARRIVED---BUT TO NO AVAIL.

6. ACCIDENTS CAN HAPPEN--AND INJURIES CAN OCCUR.

7. WE THEREFORE ASK YOU TO SUPPORT SB-139---AND MAKE IT CLEAR THAT WE ARE RESPONSIBLE FOR OUR OWN ACTIONS.

THANK YOU.

EVERETT E. WOODGERD

SENATE FISH AND GAME COMMITTEE

February 3, 1987

Page 4

Senator Smith asked if the bill infringes on the rights of the fur farms. Merrill stated that the repealer is an ancient law that dealt with making fur bearers private property. Smith asked if the language is the same as the game farm bill. Yes, it was. The department stated that this section was inadvertently omitted from the game farm bill which included fur farm legislation.

Senator Smith asked about the extension of authority within the bill. Merrill explained that the extension of authority makes it clear that the legislature recognized there may be a need to amend and not to start making rules in a whole new area.

Senator Jacobson moved that the committee recommend a DO PASS on the amendments to SB 53. The motion passed unanimously.

Senator Jacobson moved the committee recommend a DO PASS AS AMENDED on SB 53. The motion passed unanimously.

DISPOSITION OF SENATE BILL 139: Senator Smith announced that SB 139 will be transferred to the Senate Judiciary Committee.

ADJOURNMENT: There being no further business before the committee, Senator Smith, adjourned the meeting at 1:49 p.m.



SENATOR ED SMITH, Chairman

ROLL CALL

SENATE COMMITTEE--FISH AND GAME

50TH LEGISLATIVE SESSION - 1987

+++++

Date: February 3, 1987

NAME	PRESENT	ABSENT	EXCUSED
Senator Ed Smith, Chairman	X		
Senator John Anderson	X		
Senator Judy Jacobson	X		
Senator Elmer Severson	X		
Senator Greg Jergeson	X		
Senator Al Bishop	X		
Senator Esther Bengtson	X		
Senator Wm. Yellowtail Vice-Chair	X		

SB0114

1/15

1/23

COMMITTEE--(S) JUDICIARY

RUN TIME ... 04:32

RUN DATE... 04/22/87

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY-MARY HUBER

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0119	1/16	1/23		DO PASS		1/23
WEEDING, CECIL			EXEMPT ALL INSURANCE POLICIES FROM 'PLAIN LANGUAGE IN CONTRACTS ACT'			
SB0121	1/16	1/29		PASS AS AMENDED		1/30
BROWN, ROBERT J.			FIREARMS LIABILITY CRITERIA			
SB0134	1/19	1/26		DO PASS		1/26
BECK, TOM			CONVEYING A DANGEROUS DRUG TO A PRISONER; SENTENCE			
SB0137	1/19	1/26		PASS AS AMENDED	off table 2/18 tabled 2/19 tabled 1/26	2/20
WEEDING, CECIL			FEE ADDED TO FINES TO SUPPORT LAW ENFORCEMENT ACADEMY			
SB0139	2/03	2/18		PASS AS AMENDED		2/19
SMITH, ED B.			RESTRICT SNOWMOBILE AREA OPERATORS' LIABILITY			
SB0144	1/19	1/27		PASS AS AMENDED		1/27
BLAYLOCK, CHET			REVIEW OF SENTENCE OF A MENTALLY ILL OFFENDER CERTIFIED AS CURED			
SB0152	1/20	1/27		ADVERSE REPORT	JUDICIARY	2/3
WALKER, MIKE			EXTEND TIME FOR FILING COMPLAINT WITH HUMAN RIGHTS COMMISSION			
SB0152	2/06			PASS AS AMENDED		2/3 2/16
WALKER, MIKE			EXTEND TIME FOR FILING COMPLAINT WITH HUMAN RIGHTS COMMISSION		Referred back 2/16	
SB0160	1/20	1/29		PASS AS AMENDED		2/3
MAZUREK, JOSEPH P.			REVISE GENERAL LAWS ON STATUTES OF LIMITATION			
SB0161	1/20	1/30		DO PASS		2/3
MAZUREK, JOSEPH P.			REPEAL SUNSET PROVISION OF TWO SUPREME COURT ASSOCIATE JUSTICE POSITIONS			
SB0164	1/21	1/30		DO PASS		2/4
GAGE, DELWYN			REIMBURSEMENT TO DEPARTMENT OF JUSTICE FOR EMPLOYEE TIME SPENT ON SUBPOENAS			

MONTANA STATE SENATE

JUDICIARY COMMITTEE

50TH LEGISLATURE

COMMITTEE MEMBERS: Senator Joe Mazurek, Chairman
 Senator Bruce Crippen, V. Chairman
 Senator Tom Beck
 Senator Al Bishop
 Senator Chet Blaylock
 Senator Bob Brown
 Senator Jack Galt
 Senator Mike Halligan
 Senator Dick Pinsoneault
 Senator Bill Yellowtail

STAFF ATTORNEY: Valencia Lane

COMMITTEE SECRETARY: Mary Huber

BOOK: 1 of 4

INCLUSIVE DATES: January 6 - January 30, 1987

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 18, 1987

The thirty-first meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on February 18, 1987 by Chairman Joe Mazurek in Room 402 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION ON SB 139: Senator Ed Smith of Senate District #10 introduced SB 139 to the committee (see Exhibit 1). He explained the bill had been heard in the Fish and Game Committee, but felt the bill needed to be looked at by the Judiciary Committee, because it dealt with a liability issue. He handed out the minutes of that meeting in Fish and Game Committee (see Exhibit 2).

PROPOSERS: John Maynard, Tort Claims Division, supported the bill and was quoted in the January 29th meeting of the Fish and Game Committee.

John Wilson, representing himself, supported the bill also.

Ken Hoovestall, chairman of the legislative committee for the Montana Snowmobile Association, supported the bill (see Exhibit 3). He asked the committee to read the January 29th minutes to see who testified in support of the bill.

Jim Flynn, Department of Fish, Wildlife, and Parks, testified in support of the bill (see Exhibit 4).

Stew Doggett, Montana Chamber of Commerce, favored the bill.

Bob Bushnell, Montana Snowmobile Association, supported SB 139 (see Exhibit 5).

Dennis Ogl, Montana Snowmobile Association, testified in support of the bill (see January 29th minutes of the Fish and Game Committee).

Bob Didrikson, Lincoln, Montana, said it is terribly difficult to get insurance for such a group and he supported the bill.

Jim Gillispie, Lincoln, Montana, supported the bill also.

OPPOSERS: Karl Englund, Montana Trial Lawyers Association, opposed the bill. He explained a case called Leslie vs Erickson, which involved a

reck on a snowmobile (January 19, 1984). Mr. Erickson was, because of the accident, completely brain dead. The case went to court with a jury and the liability was tried first and the damages were tried second. He explained that Mr. Erickson hit an obstacle on a snowmobile trail and there was no warning sign that this obstacle was there. Mr. Englund explained that is why Mr. Erickson was suing because there should have been a warning. Mr. Englund felt something should be done to section four of the bill because the assumption on the risk part, as it is written, will not help the snowmobile people at all.

DISCUSSION ON SB 139: Bob Lane, attorney for the Fish and Game Department, said the bill, in section 4, could be corrected by just revising the first sentence in the section on assumption of the risk. Senator Pinsoneault asked how a judge would say a person was assuming a risk by just driving a vehicle of some sorts. Karl Englund said if a person is participating in snowmobiling, then he has taken the risk of being hurt. The committee decided that Valencia would look at Karl Englund's proposals and problems with the bill dealing with assumption on the risk and willful and wanton misconduct.

Senator Smith closed on SB 139.

ACTION ON SB 252: Valencia and Karl Englund handed out amendments for the bill to the committee (see Exhibit 6 and 7). Mr. Englund explained a situation dealing with an injured person and subrogation process, which Valencia's amendments and his amendments would create. Senator Blaylock moved the amendments presented by Valencia. The motion CARRIED. Senator Halligan moved the bill DO PASS AS AMENDED. The motion CARRIED.

COMMITTEE BILL ON PRODUCTS LIABILITY (LC 1797): Senator Halligan presented the draft to the committee (see Exhibit 8). The committee wanted Valencia Lane to look over the first draft and report back to the committee.

ACTION ON SB 311: Senator Blaylock asked if one had an initiative that wiped out freedom of speech, would the local community have to wait have the election to get this silly initiative into the courtroom. Senator Crippen said that kind of thing would never get passed by a community, so why worry about taking action against an initiative that was killed at the ballot. Senator Beck felt there will not be that many initiatives that would cause that much problem. Senator Beck moved to TABLE the bill. The motion carried with Senator Halligan voting no.

ACTION ON SB 226: The SRS handed out an amendment for the bill (see Exhibit 9). Valencia explained this amendment will put back a definition that was taken out before. Senator Blaylock moved the amendment. The motion CARRIED. The Board of Crime Control presented amendments (see Exhibit 10). Valencia said the amendments will give the Board some time to react to the bill. Senator Halligan moved the amendments. The motion

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb 18th

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		X
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

DATE Feb. 19th

COMMITTEE ON Judiciary

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

SUMMARY OF SB139 (E. SMITH)

(Prepared by Senate Judiciary Committee staff)

SB139 defines the responsibility and liability of snowmobile area operators and the responsibility and risk borne by snowmobilers. This bill is based on similar statutes relating to skiers' liability found at 23-2-731 through 23-2-737, MCA (attached). Basically, this bill establishes a willful and wanton standard for liability for snowmobile area operators.

- Section 1. NEW. States the purpose of the bill as establishing areas of responsibility and acts for which snowmobile area operators may be held liable and those risks a snowmobiler expressly assumes or will be presumed to have assumed.

- Section 2. NEW. Definition section. Among other things, defines "snowmobile area operators" as "those persons responsible for the maintenance of snowmobile trails and open areas or those persons providing rental snowmobile equipment". Such persons include "the United States forest service, the Montana department of fish, wildlife, and parks, the Montana snowmobile association, individual snowmobile clubs, landowners or their tenants, persons who offer snowmobile equipment for rent, and private trail grooming contractors.

- Section 3. NEW. Establishes duty of snowmobile area operators to mark trail maintenance vehicles. Provides that a snowmobile area operator is liable for death or injury to a snowmobiler or other person or property only for an act or omission that constitutes willful or wanton misconduct.

- Section 4. NEW. Establishes assumption of the risk by a snowmobiler for injuries or death that results from participating in the sport of snowmobiling.

- Section 5. NEW. Establishes duty of a person who rents snowmobiles to another to maintain them in good mechanical condition and to offer renters instructions in the mechanical operation on the rental snowmobile.

- Section 6. NEW. Bars recovery by a snowmobiler from a snowmobile area operator for any injury resulting from any risk inherent in the sport of snowmobiling (almost identical to section 23-2-737 regarding skiers' liability).

- Section 7. Amends 27-1-701. Standard amendment to liability statute put in all bills this session dealing with limitations to liability.

- Section 8. Amends 70-16-302. Section 70-16-302 presently provides that a landowner or tenant who allows others onto his property for recreational opportunities, without compensation, is not liable to such person for any injury to person or property resulting from any act or omission of such landowner or tenant unless such act or omission constitutes willful or wanton misconduct. This bill amends this statute to make its provisions clearly apply to the Department of Fish, Wildlife, and Parks when the Department provides recreational opportunities on private land under an agreement.

(over)

- Section 9. A two-thirds vote of the members of each house is required for passage because both section 3 and section 8 limit governmental liability (Article II, section 18 of the Montana constitution).

COMMENTS: A severability clause would be appropriate for this bill because of its diverse applications.

C:\LANE\WP\SUMSB139.

department may employ qualified engineers to make such inspections for reasonable fees plus expenses. If, as the result of an inspection, it is found that a violation of the department's rules exists or a condition in passenger tramway construction, operation, or maintenance exists endangering the safety of the public, an immediate report shall be made to the operator whose passenger tramway has received such inspection and to the department for appropriate investigation and order.

History: En. Sec. 11, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6611.

23-2-723. Order for corrective action and compliance. If, after investigation, the department finds that a violation of this part or any of its rules exists or that there is a condition in passenger tramway construction, operation, or maintenance endangering the safety of the public, it shall forthwith issue its written order setting forth its findings, the corrective action to be taken, and fixing a reasonable time for compliance therewith. Such order shall be served upon the operator involved in such violation personally or by registered or certified mail at the department's election, and return shall be made as provided in the Montana Rules of Civil Procedure.

History: En. Sec. 12, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6612.

23-2-724. Remedies to enforce compliance. If any operator fails to comply with a legal order or rule of the department, the department, at its election, may:

(1) suspend the registration of the affected passenger tramway until the operator complies therewith; or

(2) bring injunctive proceedings in the district court of the judicial district in which the affected passenger tramway is located to compel compliance therewith. In such proceedings the department shall not be required to post bond.

History: En. Sec. 13, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6613.

23-2-725. Judicial review. Any order of the department adverse to an operator may be appealed by the operator to the district court of the district wherein is located his passenger tramway which is the subject of such order, and said district court shall conduct a proceeding, de novo, and the decision of the district court shall be subject to appeal to the supreme court of Montana, as in civil cases.

History: En. Sec. 14, Ch. 436, L. 1971; amd. Sec. 2, Ch. 63, L. 1974; R.C.M. 1947, 69-6614.

23-2-726 through 23-2-730 reserved.

23-2-731. Purpose. It is recognized that there are inherent risks in the sport of skiing that are essentially impossible to eliminate by the ski area operator but that should be known by the skier. It is the purpose of 23-2-731 through 23-2-737 to define those areas of responsibility and affirmative acts for which the ski area operator is liable for loss, damage, or injury and those risks for which the skier expressly assumes or shall be considered to have voluntarily assumed the risk of loss or damage and for which there can be no recovery.

History: En. Sec. 1, Ch. 509, L. 1979.

SENATE JUDICIARY

EXHIBIT NO. 1

DATE

2-18-87

S.B. 139

23-2-732. Definitions. As used in 23-2-731 through 23-2-737, the following definitions apply:

(1) "Skier" means any person admitted to a ski area under the control of a ski area operator for the purpose of engaging in the sport of skiing by using the ski slopes, trails, and areas and does not include a person using an aerial passenger tramway.

(2) "Ski slopes, trails, and areas" means those areas designated by the ski area operator to be used by skiers for the purpose of participating in the sport of skiing.

History: En. Sec. 2, Ch. 509, L. 1979.

23-2-733. Duties of operator regarding ski areas. A ski area operator shall:

(1) mark all trail maintenance vehicles and furnish the vehicles with flashing or rotating lights that must be in operation whenever the vehicles are working or are in movement in the ski area;

(2) mark with a visible sign or other warning implement the location of any hydrant or similar equipment used in snowmaking operations and located on ski slopes, trails, and areas;

(3) maintain one or more trail boards at prominent locations at each ski area displaying that area's network of ski trails and slopes;

(4) post a notice of the requirement for the use of ski-retention devices;

(5) designate by trail board or otherwise which trails or slopes are open or closed.

History: En. Sec. 3, Ch. 509, L. 1979.

23-2-734. Duties of operator with respect to passenger tramways. A ski area operator shall construct, operate, maintain, and repair any passenger tramway in accordance with the rules of the department of administration. However, nothing in this section relieves an operator from the duty of taking whatever other actions are necessary to properly construct, operate, maintain, and repair a passenger tramway.

History: En. Sec. 4, Ch. 509, L. 1979.

23-2-735. Duties of passenger. No passenger may:

(1) board or disembark from a passenger tramway except at an area designated for such purposes;

(2) throw or expel any object from a passenger tramway;

(3) commit an act that interferes with the running or operation of a passenger tramway;

(4) use a passenger tramway unless the passenger has the ability to use it safely without any instruction on its use by the operator or requests and receives instruction before boarding;

(5) embark on a passenger tramway without the authority of the operator.

History: En. Sec. 5, Ch. 509, L. 1979.

23-2-736. Skier's assumption of responsibility — duties. (1) A skier assumes the risk and all legal responsibility for injury to himself or loss of property that results from participating in the sport of skiing by virtue of his participation. The assumption of risk and responsibility includes but is

not limited to injury or loss caused by the following: variations in terrain, surface or subsurface snow or ice conditions, bare spots, rocks, trees, other forms of forest growth or debris, lift towers and components thereof, pole lines, and plainly marked or visible snowmaking equipment.

(2) A skier is responsible for knowing the range of his own ability to ski any slope, trail, or area and for skiing within the limits of his ability, skiing only on designated slopes and trails, maintaining control of speed and course at all times while skiing, heeding all posted warnings, and refraining from acting in a manner that may cause or contribute to the injury of anyone. The responsibility for collisions with a person or object while skiing is the responsibility of the person or persons and not the responsibility of the ski area operator.

(3) A person who is skiing may not place an object in the ski area or on the uphill track of a passenger tramway that may cause a passenger or skier to fall, cross the track of a passenger tramway except at a designated and approved area, or if involved in a skiing accident, depart from the scene of the accident without leaving personal identification before notifying the proper authorities or obtaining assistance when the skier knows that a person involved in the accident is in need of medical or other assistance.

History: En. Sec. 6, Ch. 509, L. 1979.

23-2-737. Effect of comparative negligence. Notwithstanding any comparative negligence law in this state, a person is barred from recovery from a ski area operator for loss or damage resulting from any risk inherent in the sport of skiing as described in 23-2-736.

History: En. Sec. 7, Ch. 509, L. 1979.

Cross-References

Comparative negligence — extent to which contributory negligence bars recovery, 27-1-702.

CHAPTER 3

ATHLETICS BOXING AND WRESTLING

Part 1 — State Board of Athletics
(Repealed. Sec. 1, Ch. 322, L. 1981)

Section

Part 2 — Boxing, Sparring, and Wrestling Matches
(Repealed. Sec. 1, Ch. 322, L. 1981)

Part 3 — General

23-3-301. Definitions.

Part 4 — Board of Athletics

23-3-401. Board organization — compensation — meetings — department to keep records.

23-3-402. Enforcement of rules by board member — board designees.

SENATE FISH AND GAME COMMITTEE

January 29, 1987.

Page 6

There was no objection from the committee on the initial amendment. Senator Jergeson moved that the committee report and a DO PASS on the amendment to SB 139. The motion passed unanimously.

Senator Jergeson moved that the committee report and a DO PASS AS AMENDED on SB 139. The motion passed unanimously.

DISPOSITION ON SENATE BILL 109:

Senator Jergeson moved the Statement of Intent is in accord with SB 109. The DO PASS motion passed unanimously.

CONSIDERATION OF SENATE BILL 107:

Senator William Farrell, Senate District No. 31, sponsor of the bill stated the bill's intent is to clarify the law and to promulgate adoption of rules. Line thirteen of the present bill reads "may" and inserts "shall." In addition, the bill in restriction of firearms, consideration of population density, type of terrain, nature and extent of the need of the area will be taken into consideration, as well as the interest of public health, safety, and the protection of private property. If the judgment call revealed a need, the people living in the area could establish their needs according to the specified criteria.

PROponents

Alice Austin, 4741 Sundown Road, Missoula, MT., representing a citizen petition group, stated that the group seeks to place a section of the Bitterroot River bottom to hunting and the charge of firearms. The group includes residents of the area and people who use the area for recreation. The effort is supported by the University of Montana, the Missoula High School district, the Missoula Country Club, and the Lakesmont Municipal Golf Course. Ms. Austin presented written testimony. (Exhibit 7)

David Lackman, Montana Public Health Association, Helena, testified in support of SB 107 as amended. Public safety is of great concern and the association has been concerned at the failure of the Fish, Wildlife and Parks to act in a decisive manner.

Dick Johnson, Deputy Director of the Fish, Wildlife and Parks Department, gave written testimony in support of SB 107. (Exhibit 8)

OPponents

There were no opponents to SB 107.

SENATE JUDICIARY

EXHIBIT NO. 2

BILL NO. SB 139

SENATE FISH AND GAME COMMITTEE

January 29, 1987

Page 7

QUESTIONS FROM THE COMMITTEE

Senator Jorgenson asked Senator Farrell if the change from "may" to "shall" would constitute a significant departure from the purpose of the bill according to title. The change would constitute changes to adopt new rules to cover all sorts of circumstances on department land without whether they were needed or not. "May" or "shall, when necessary" would be language that would be sent to the commission and to the department according to Lane, attorney for the Fish, Wildlife and Parks.

Senator Yellowtail was excused from the committee hearing.

Senator Severson asked the location of the problem area. The area runs from the Buckhouse Bridge to the Miller Bridge.

Senator Severson asked if the county could issue a no shooting regulation in the area. Senator Commissioners have no authority to make regulations concerning no-shooting areas.

Senator Smith asked how much of the problem area was private property. Sen. Austin stated that the area was "private within the city." Senator Smith replied that it was difficult for the Fish, Wildlife and Parks department to implement any rules concerning property that is privately owned. On August 6, 1987, the Fish and Wildlife Commission declared a 100 foot downstream from the Miller bridge shall be a no-shooting area. Almost all the land owners with property on the river bank signed the petition for the area to be drained.

The hearing on SB 107 was closed.

DISPOSITION ON SENATE BILL 107:

Senator Smith requested the committee to hold the bill until a later date due to the absence of Senator Jorgenson.

ADJOURNMENT:

There being no further business before the committee, Senator Smith adjourned the hearing at 2:15 p.m.

Respectfully,
SENATE JUDICIARY

EXHIBIT NO. 7

DATE 1-28-87

FILE NO. 5.0.127

SENATOR LO SMITH, CHAIRMAN

Testimony in behalf of SB-139

SENATE JUDICIARY

EXHIBIT NO. 3

DATE FEB. 18, 198

BILL NO. SB 139

THE SNOWMOBILERS RESPONSIBILITY ACT

For the record my name is Ken Hoover,
Chairman of the Legislative Committee
for The Montana Snowmobile Association.

SB-139 is ~~pattered after~~, and is
~~designed~~ to make the snowmobiler
responsible for his or her own action
and to limit the liability to the
snowmobile area operator.

This Bill is patterned after, ~~and~~
~~designed~~ the downhill skier
responsibility act presently in the
law. - the best in the country - never been challenged.

In other words, if you go skiing
and fall down and break a leg, you
have no claim against the ski hill
operator unless there was an unsigned
ditch or fence, etc that constituted
willful & wanton misconduct.

This Act would recognize that there
are inherent risks in the sport of
snowmobiling, just like skiing, and that
the participant recognizes these risks and
voluntarily accepts these risks.

SB 139

February 18, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife and Parks

The Department supports this bill including the amendments offered by the sponsor and the State Snowmobile Association. As the state agency responsible for the management of snowmobile recreation in Montana, we applaud the initiative of the Association in its efforts to bring equity to the distribution of liability responsibility among participants and providers involved with recreational snowmobiling.

SB 139 is similar in concept and patterned after Section 23-2-736, MCA, the "Skiers Responsibility Law," which was passed in 1979. The bill recognizes the risks inherent in the sport of snowmobiling and requires that participants be responsible for their own acts. The allocation of a greater share of the risks involved in an inherently dangerous sport to the willing participants is sound public policy and is consistent with accepted restraint on tort liability in similar circumstances.

It does not absolve the Department, other agencies, landowners, or providers from responsibility for their acts, but does protect them from unreasonable liability. The standard of liability, willful or wanton misconduct, is the standard applied to landowners under the stream access statutes, Section 23-2-321, MCA, and to landowners who permit recreation on their property without consideration, Section 70-16-302, MCA.

Passage of SB 139 will help to ensure that unreasonable liability responsibilities will not deprive Montana snowmobilers of land, facilities, and groomed trails upon which to enjoy their sport.

AMENDMENTS TO SB 139

1. Page 2, line 10.

Following: "clubs,"

Insert: "landowners,"

2. Page 4, line 6.

Following: "condition;"

Insert: "and"

3. Page 4, line 7.

Following: "in the"

Insert: "mechanical"

4. Page 4, lines 8 through line 10.

Following: "snowmobile"

Strike: remainder of line 8 through "area" on line 10

5. Page 5, line 19.

Following: "department"

Insert: " or the landowner"

SENATE JUDICIARY

EXHIBIT NO. 4

DATE 2-18-87

BILL NO. S.B. 139

MR CHAIRMAN, MEMBERS

THIS LIABILITY BILL IS NEEDED SO INSURANCE COMPANIES WILL AGAIN MAKE INSURANCE AVAILABLE TO CLUBS OF MONTANA, WHO ARE GROOMING TRAILS IN THEIR AREAS AND TO PROTECT THE INDIVIDUALS OPERATING THE GROOMING EQUIPMENT. IT PLACES THE LIABILITY ON THE INDIVIDUAL OPERATING THE SNOWMOBILE. AT PRESENT WE HAVE MANY CLUBS WHICH CAN NOT EVEN FIND A COMPANY WHICH WILL PROVIDE THE NECESSARY INSURANCE. WE NEED A DO PASS ON THIS BILL.

THANK YOU

Bob Bushnell

BOB BUSHNELL
PRESIDENT
MT SNOWMOBILE ASSN
Box 4732
HELENA, MT 59604

House bill. Senator Yellowtail moved the amended bill DO PASS AS AMENDED. Senator Halligan felt the bill will hit the innocent violator. He said there has to be a better way of doing this. The motion FAILED on a tie vote. (See roll call vote sheet)

ACTION ON SENATE BILL 139: Valencia Lane gave amendments to the committee. (Exhibit 5) Senator Galt moved the amendments. The motion carried. Senator Brown moved the bill DO PASS AS AMENDED. The motion Carried.

ACTION ON SENATE BILL 77: Senator Pinsoneault said the bill gives aggravated circumstances for the judge to use in a decision on the death penalty. He said he just added the death of a rescuer in a kidnapping to the list. Senator Pinsoneault moved the bill DO PASS.

Senator Crippen asked how broad does the term "rescuer" go. Senator Pinsoneault felt the term was well understood and that a defendant is the one that has to cause the death of a rescuer. Senator Crippen asked what the bill does with an unauthorized search party and one dies because he fell off a rock while searching. Senator Pinsoneault felt it was too far-fetched an idea to use in this bill.

Senator Bishop said the death has to be part of the act of rescuing.

Senator Halligan moved the death has to occur as a direct action of the rescue. The motion carried. (See Standing Committee Report)

Senator Pinsoneault moved the bill DO PASS AS AMENDED. The motion carried with Senators Mazurek, Crippen and Blaylock voting no.

ACTION ON SENATE BILL 338: Mr. John Fitzpatrick gave the committee amendments. (Exhibit 6) He explained the amendments and how they are a procedure to use in drug testing. The committee studied the amendments. Mr. Fitzpatrick explained some drugs leave the system in 4 days, so samples are usually current. He said that is why many people take a separate drug test weeks later, because they know with certain kinds of drugs, the chemical leaves the body quickly.

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date FEB. 19

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

PROPOSED AMENDMENTS TO SB139, SECOND READING COPY (YELLOW):

1. Page 3, line 17.

Following: "from"

Strike: "participating"

Insert: "the risks inherent"

2. Page 3, line 18.

Following: "snowmobiling"

Strike: "by virtue of his participation"

3. Page 4, line 9.

Following: line 8

Insert: "(3) The provisions of this section do not affect a products liability cause of action based upon the design or manufacture of snowmobile equipment or products or safety equipment used incidental to the operation of a snowmobile."

[THE WAY THE SECTION WOULD READ IF ABOVE AMENDMENTS ADOPTED:

"(1) A snowmobiler assumes the risk and all legal responsibility for death or injury to himself or other persons or property that results from the risks inherent in the sport of snowmobiling. The assumption of risk includes but is not limited to death or injury caused by the following: . . . (Remainder of section the same with the addition of new subsection (3) above).

(3) The provisions of this section do not affect a products liability cause of action based upon the design or manufacture of snowmobile equipment or products or safety equipment used incidental to the operation of a snowmobile."]

STANDING COMMITTEE REPORT

February 19

387

19.....

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on.....

SENATE BILL

139

having had under consideration.....

No.....

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Rastrict snowmobile area operators' laibility.

SENATE BILL

139

Respectfully report as follows: That.....

No.....

1. Page 3, line 17.

Following: "from"

Strike: "participating"

Insert: "the risks inherent"

2. Page 3, line 18.

Following: "snowmobiling"

Strike: "by virtue of his participation"

3. Page 4, line 9.

Following: line 8

Insert: "(3) The provisions of this section do not affect a products liability cause of action based upon the design or manufacture of snowmobile equipment or products or safety equipment used incidental to the operation of a snowmobile."

C:\LANE\WP\ANDSB139.

AND AS AMENDED

DO PASS

~~DO NOT PASS~~

Senator Mazurek

Chairman.

JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION

1987

Committee Members

District

Rep. Earl Lory, Chairman	59
Rep. John Mercer, Vice Chairman	50
Rep. Kelly Addy	94
Rep. Dave Brown	72
Rep. Tom Bulger	37
Rep. John Cobb	42
Rep. Fritz Daily	69
Rep. Paula Darko.	2
Rep. Ralph Eudaily	60
Rep. Leo Giacometto	24
Rep. Bud Gould	61
Rep. Ed Grady	47
Rep. Tom Hannah	86
Rep. Vernon Keller	83
Rep. Al Meyers	53
Rep. Joan Miles	45
Rep. Paul Rapp-Svrcek	51
Rep. Bill Strizich	41

Secretary

Renee Podell

Staff

John McMaster

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
102		3/6/87									
104		3/12/87						3/13/87			
108		3/12/87							3/17/87		
112		3/5/87	3/5/87					3/5/87			
114		3/12/87						3/17/87			
119		3/9/87						3/10/87			
121		3/16/87						3/23/87			
134		3/6/87	3/6/87					3/6/87			
139 ✓		²⁰ 3/12/87	3/23/87							3/26/87	
144		3/4/87	3/5/87							3/5/87	
152		3/13/87						3/23/87			
160		3/13/87								3/23/87	
164		3/13/87						3/23/87			
173		3/13/87	tabled 3/23/87						reconcidered 3/27/87		

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

Rep. Rapp-Svrcek pointed out that Rep. Mercer's amendments go too far. Rep. Giacometto stated that this bill does not do anything to help the insurance companies but it does help the people of the state of Montana. Rep. Mercer stated that America is a land of liberty and liberty is based on responsibility for your own actions. The tort system was founded on a concept of being responsible for your own actions and America has shifted from that idea to an idea of a no fault system. America must return to the fault system where a person is responsible for their own action.

Question was called on the amendments. A roll call vote was taken. The motion CARRIED 10-8. (See Roll Call Vote and Amendments attached). Rep. Mercer moved that SB 51, BE CONCURRED IN AS AMENDED. A roll call vote was taken and the motion CARRIED 10-8. (See Roll Call Vote Attached). SB 51, BE CONCURRED IN AS AMENDED.

SENATE BILL NO. 139, Senator Smith, District No. 10, stated that this is an act defining the responsibility and liability of snowmobile area operators and the responsibility and risk borne by snowmobilers. He pointed out that this bill is necessary for the state of Montana if it is to continue to have recreational snowmobiling.

PROPONENTS:

KEN HOOVESTOL, Chairman of the Legislative Committee for the Montana Snowmobile Association, stated that the Snowmobilers Responsibility Act, SB 139, is to make the snowmobiler responsible for his or her own actions and to limit the liability to the snowmobile operator. The bill is patterned after the down hill Skier Responsibility Act.

DICK JOHNSON, presenting testimony on behalf of Jim Flynn, Department of Fish, Wildlife and Parks, stated that as a state agency responsible for the management of snowmobile recreation in Montana, the Department applauds the initiative of the Montana Snowmobile Association in their efforts to bring equity to the distribution of liability responsibility among participants and providers involved with recreational snowmobiling. Passage of SB 139 will help to ensure that unreasonable liability responsibilities will not deprive Montana snowmobilers of land, facilities, and groomed trails upon which to enjoy their sport. He submitted written testimony. (Exhibit A).

DENNIS OGLE, Montana Snowmobile Association, District Director, Helena, explained that Montana currently has approximately 2000 miles of groomed snowmobile trails and many of the miles are on private lands. He stated that they support this bill because it will help to eliminate some

problems that landowners are presently having. He recommended a do pass.

BUD FLATEN, Missoula Snowmobile Club, supports this bill to put a stop to the snowmobilers who prey on the insurance companies. He stated that we must take on our own responsibility. He submitted written testimony. (Exhibit B).

REP. EUDAILY presented testimony from MARVIN HAMMER, Missoula, District Director for the Montana Snowmobile Association, (Exhibit C). He stated that SB 139 is needed to help the Fish, Wildlife and Parks Department, private landowners, snowmobile clubs and grooming operators to continue to maintain the quality snowmobiling and snowmobile trails that we have in our state.

KEN HOOVESTOL presented Minutes from the Senate Fish and Game Committee, dated January 29, 1987, as (Exhibit D). He also presented written testimony from MICHAEL P. LEJEUNE, Missoula, as (Exhibit E).

DOUG ABELIN, Cut Bank Snow Goers, stated that this bill is a fair and good bill and should be adopted as it is currently amended. He presented written testimony as (Exhibit F).

REP. GRADY, went on record in support of this bill.

OPPONENTS:

KARL ENGLAND, Montana Trial Lawyers Association, related the Lesley Ericksen case. He stated that if the bill is passed something that happened to Lesley Ericksen will not be compensated through a liability award. He pointed out that the snowmobilers seem to want the bill, Department of Fish, Wildlife and Parks want the bill, but no one is speaking for people like Lesley Ericksen. He further stated that this bill needs to be looked at seriously from a gross negligence standard as opposed to a willful or wanton standard.

QUESTIONS (or Discussion) ON SENATE BILL NO. 139:

Rep. Eudaily asked Mr. England to explain the difference between gross negligence and willful and wanton misconduct. Mr. England stated that a good way to look at this situation is to take a scale, at the bottom of the scale, look at the idea of negligence, failure to do what a reasonable person would do under the circumstances. Gross negligence would be a gross deviation or a great deviation from what a person would do under the circumstances. Willful and wanton misconduct gets into the area of an intentional act designed to hurt. The standard is above gross negligence. It is aimed at a purposeful act rather than a negligent act.

49

Rep. Miles asked Mr. England what affect this will have on insurance rates. He stated that it will have 0 to less than 1%.

Senator Smith closed the hearing on SB 139 by stating that the committee has worked with Mr. England on the problems he was concerned about and he hoped the comments made by Mr. England will not cloud the issue. Senator Smith stated that the Senate Judiciary Committee did not have any objections to this bill. He further stated that John Wilson, Director of Tourism for the Department of Commerce came in and testified in favor of the bill when it came up in the Senate. He recommended a be concurred in vote for SB 139 because it is a necessary piece of legislation.

SENATE BILL NO. 226, Senator Halligan, District No. 29, presented a handout which covered the background/problem of this bill. (Exhibit A). He stated that this act revised procedures for youth detention, requiring a probable cause hearing after a youth has been taken into custody, providing detention procedures for youth before a probable cause hearing and allowing release of a youth on bail. The Federal Juvenile Justice and Delinquency Prevention Act of 1984 mandates removal of all juveniles from adult jails. He pointed out that section 5 gives rulemaking authority to the Department of Institutions governing the licensure of juvenile detention facilities. This authority would be transferred to the Department of Family Services if HB 325 is enacted.

PROPOSERS:

TED LECHNER, 13th Judicial District, Director of Services, Yellowstone County, stated that they are currently developing a juvenile detention facility within Yellowstone County and some of the problems addressed in SB 226 are exactly the stumbling blocks that we are running into in developing that facility. He supported this legislation.

DOROTHY MCCARTER, Attorney at the Attorney General's Office, stated that she helped to draft this bill for the Board of Crime Control and pointed out that this legislation is badly needed in Montana.

STEVE NELSON, Department of Crime Control, explained that this legislation will tie up loose ends, it gives counties the statutory tools it needs to address problems of juvenile programs and it is a message to counties and to the state of Montana that at some point in time we will no longer hold juveniles in adult jails but rather have separate facilities for them.

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 20, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)		✓	✓
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)		✓	
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

A
3-20-87
SB# 139

SB 139
March 20, 1987

Testimony presented by Jim Flynn, Dept. of Fish, Wildlife and Parks

The department supports this bill including the amendments added in the Senate. As the state agency responsible for the management of snowmobile recreation in Montana, we applaud the initiative of the Montana Snowmobile Association in their efforts to bring equity to the distribution of liability responsibility among participants and providers involved with recreational snowmobiling.

SB 139 is similar in concept and patterned after Section 23-2-736, MCA, the "Skiers Responsibility Law," which was passed in 1979. The bill recognizes the risks inherent in the sport of snowmobiling and requires that participants be responsible for their own acts. The allocation of a greater share of the risks involved in an inherently dangerous sport to the willing participants is sound public policy and is consistent with accepted restraint on tort liability in similar circumstances.

It does not absolve the Department, other agencies, landowners, or providers from responsibility for their acts, but does protect them from unreasonable liability. The standard of liability, willful or wanton misconduct, is the standard applied to landowners under the stream access statutes, Section 23-2-321, MCA, and to landowners who permit recreation on their property without consideration, Section 70-16-302, MCA.

Passage of SB 139 will help to ensure that unreasonable liability responsibilities will not deprive Montana snowmobilers of land, facilities, and groomed trails upon which to enjoy their sport.

B
3-20-87
SB #139

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments: *... ..*
... ..
... ..
... ..
... ..

and I start about 11:30. The water is warm
and the breeze is just what I need.

Microfida

722

(over) important

Montana

SNOWMOBILE

Association



Mr Chairman and members of the Judiciary Committee:

My name is Marvin Hammer from Missoula. I am a District Director for the Montana Snowmobile Association. I am here this morning to represent the Snowmobile Clubs in Seeley Lake, Saltese, Ronan, Ovando and Missoula.

Recreational snowmobiling is done on miles of groomed snowmobile trails in Montana on both private and public lands. We as snowmobilers are fortunate to be able to enjoy our recreation during the winter months on these lands.

Senate Bill 139 will help to protect land owners, snowmobile clubs, groomer operators and snowmobile rental agencies. As snowmobilers enjoy snowmobiling and groomed snowmobile trails, it promotes tourism within our state and the local economy of many small resort communities. Snowmobilers bring life and money into these communities that would otherwise have their doors closed during the winter months. Snowmobile clubs and officers are now very concerned about their sponsoring of events in fear of being sued. Some clubs have discontinued their activities because they have tried to get insurance and found it to be expensive.

Everything we do has an inherent risk. As concerned recreational snowmobilers we need to be responsible for actions as we enjoy our sport of snowmobiling.

Senate Bill 139 "Snowmobilers Liability and Responsibility Bill" is needed to help the Fish Wildlife and Parks, Forest Service, private land owners, snowmobile clubs and grooming operators to continue to maintain the quality snowmobiling and snowmobile trails that we have in our state. Thank you.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

SENATE
BILL NO.

DATE march 20, 1987

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 23, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 23, 1987, at 7:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present.

EXECUTIVE SESSION:

ACTION ON SENATE BILL NO. 121:

Rep. Giacometto moved that SB #121, Be Concurred In. Question was called and a voice vote was taken. The motion CARRIED 11-2 with Reps. Cobb and Eudaily dissenting. SB #121 BE CONCURRED IN.

ACTION ON SENATE BILL NO. 139:

Rep. Grady moved that SB #139, Be Concurred In. Rep. Cobb moved the page 3 amendment of the bill. He explained that on page 3, Lines 5-6 and line 13, he is striking "willful or wanton misconduct" and inserting "gross negligence". Rep. Grady questioned Rep. Cobb in regard to this amendment asking him if it lowers the standard. Rep. Cobb pointed out that it is a lower duty and higher responsibility. Rep. Grady asked what the skiers currently have and he stated that responsibility needs to be put on the people. Rep. Giacometto acknowledged that he is against the amendment but pointed out that page two gives the list of everyone working on the trails. Rep. Meyers opposed the amendment. Question was called and a voice vote was taken. The motion CARRIED 8-7. (See Amendment Attached). Mr. McMaster explained that the added language starting on page 5, line 25 and going to page 6, line 9 was brought out by Rep. Mercer at the time of the hearing as being too broad, because it covers all recreational activities, and he said, that since Rep. Mercer is not here at this time, he felt that he should bring it up to the committee. He pointed out that line 2, states "provide recreational opportunities". Rep. Giacometto moved a clean up amendment on page 4, line 22 striking "effective" and inserting "effect of". Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendment Attached). Rep. Addy moved an amendment on page 6, line 5, striking "the department,". Question was

JUDICIARY COMMITTEE

March 17, 1987

Page

called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Grady moved that SB #139 Be Concurred In As Amended. Question was called and a voice vote was taken. The motion CARRIED 12-3. SB 130 BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 152:

Rep. Brown moved that SB 152, Be Concurred In. Rep. Addy stated that the whole purpose of the bill is that the Supreme Court has held that the short statute of limitations is unconstitutional recently, so, this bill is conforming the statutory requirement of filing claims and there is no big policy question. Question was called and a voice vote was taken. The motion CARRIED 14-2, with Reps. Hannah and Giacometto dissenting. SB #152 BE CONCURRED IN.

ACTION OF SENATE BILL NO. 164:

Rep. Addy moved that SB #164, Be Concurred In. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB #164, BE CONCURRED IN.

ACTION OF SENATE BILL NO. 173:

Rep. Hannah moved that SB #173, Be Not Concurred In. Rep. Addy stated that the privilege is being changed an awful lot and when it comes to the marital relationship the privilege is being taken away. Rep. Miles pointed out that it is 1987 and we should think about the fact that one person can not tell a spouse what to say or not say. Rep. Addy stated that unless the person against whom the testimony is offered has the privilege, it is no privilege at all. He further stated that the relationship will not be secure between the husband and wife. Rep. Keller stated that the county attorney testified to the fact that times have changed and that this bill should pass. Rep. Miles requested that the committee at least consider passing sections two and three and section one could be deleted so that the good parts of the bill can be saved. Rep. Meyers agreed with the motion. Rep. Addy moved that sections 1, 3, and 4 be deleted. Rep. Hannah stated that was not worth saving and he moved to Table SB #173. Question was called and a voice vote was taken. The motion FAILED 5-11. Question was called and a voice vote was taken on Rep. Addy's amendment. The motion FAILED 6-9. Question was called. A Roll Call vote was called. The motion FAILED ON A TIE VOTE OF 9-9. (See Attached Roll Call Vote). Rep. Meyers moved that SB #173, be tabled. The motion CARRIED unanimously. SB #173 TABLED.

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 23, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

MARCH 23,

1907

JUDICIARY

Mr. Speaker: We, the committee on

SENATE BILL NO. 139

report

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Chairman

1. Page 2, line 3 and 4 and line 13.

Change: "The court shall have jurisdiction"

to hear and determine

all cases arising under the constitution

and laws of the United States

and all cases of equity

arising under the constitution

and laws of the United States

and all cases of equity

arising under the constitution

and laws of the United States

and all cases of equity

arising under the constitution

and laws of the United States

and all cases of equity

Microfilm

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reading copy

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color

REP. GRADY WILL CARRY THE BILL!

HOUSE

MARCH 23,

19⁸⁷

Mr. Speaker: We, the committee on JUDICIARY

SENATE BILL NO. 139

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Earl L. Long

Chairman

1. Page 3, lines 5 and 6 and line 13.
Strike: "willful or wanton misconduct" on lines 5 and 6 and
on line ~~5~~ 13
Insert: "gross negligence"

2. Page 4, line 22.
Strike: "Effective"
Insert: "Effect of"

3. Page 6, line 5.
Strike: "the department,"
Strike: ", OR"
Insert: "and"

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color

REP. GRADY WILL CARRY THE BILL!

fantastic job. He agreed with Rep. Addy but added. "we must do what is right".

Question was called. Chairman Lory called for a roll call vote. The motion CARRIED 12-4. (Roll call vote attached).

ACTION ON SENATE BILL NO. 139:

Rep. Grady requested that SB 139 be reconsidered and that Mr. Robert Lane, attorney, Department of Fish, Wildlife and Parks, speak to the committee in regard to the amendment made to SB 139, on March 23, 1987. Rep. Daily moved that Mr. Lane be allowed to speak in Executive Session. The committee unanimously favored the motion. The committee further moved that Mr. Lane's words be recorded verbatim.

"From my perspective, as the attorney for the department, I have been asked first if there is a difference between gross negligence and wilful or wanton misconduct. I have advised the department, that as a practical matter, I don't see a difference between the two. I don't think a jury is going to distinguish between those two standards in their application. I know that Karl England testified before you and stated, in effect, I thought, that wilful or wanton misconduct in effect, required an intentional act as an attempt to harm somebody and I don't believe that if that is what he was saying, if that is true. If it's an intentional act, then, it is homicide or assault, and, I think that when you define the two terms and in the jury's application of those two terms, they are going to essentially be the same. If you would like, I could read a couple definitions of the two terms and you could see if there is a difference between those. I took this definition out of the BLACK'S LAW DICTIONARY. Gross negligence is defined as "the intentional failure to perform a manifest duty in reckless disregard of the consequences affecting the life or property of another". Such a gross want of care in regards to the rights of others as suggested by the presumption of wilfulness or wanton. A definition of wilful or wanton misconduct, out of the RECREATIONALIST LAW RECORDER, which is providing the definition for use in the recreationist use statute says, "wilful or wanton misconduct unlike ordinary negligence goes beyond carelessness, it is a more outrageous behavior, which demonstrates another's disregard for the physical well being of others". So, I think the standards are pretty much the same in applicastion. My only suggestion to the committee would be that wilful or wanton misconduct is used in the recreational use statutes as it applies to landowners when they allow people to

recreate on their property without compensation. It applies to landowners under the stream access provisions and it applies under the recreational skiers statute. So, for consistency, wilful or wanton misconduct would be at least consistent. There was one other thing I wish to comment on also, and that was the change this committee made in section 8 of this bill. The recreational use statute, that is 70-16-302, the word "department" was taken out of the middle of that sentence. The reason that amendment was put in there was to treat the department the same as it is treated already, as a landowner, or as other landowners are treated. When they allow or participate in the allowance of recreational use of property without consideration, right now, the department is held to a wilful or wanton misconduct standard. If we are the landowner, and allow people to recreate on the public land without compensation, it seems consistent when the department enters into an agreement with the landowner providing for a recreational option such as snow mobile trails, that, the landowner in that case would be held to a wilful or wanton misconduct standard. The department, when no compensation is charged, should also be held to the same standard as a consistent policy. The intent in amending the recreational use standard is to make it clear, that the department, when it is in the position as it would be as a landowner, or the same position as other landowners, basically, to be treated the same as those landowners in terms of the standard of conduct. That won't apply to our recreational areas where we charge fees. Those highly developed areas will be held to the standard of ordinary negligence in those cases. The final point is the way the amendment was done, it took the word "department" out of the middle of that sentence. If you read that sentence, the department is mentioned three times in there and I guess as an attorney, I could not advise somebody now with department only taken out once, whether we are in or out, or what standard applies. The amendment doesn't make sense in that perspective. Thank you very much."

Rep. Miles requested that Mr. Karl England, attorney, Montana Trial Lawyers Association, be allowed to speak in Executive Session and give the other side of the issue. The committee further moved that Mr. England's words be recorded verbatim.

"Actually, Mr. Chairman and members of the committee, when we did that whole slough of limited liability bills before transmittal deadline, I think, Rep. Cobb did some research in terms of gross negligence and wilful or wanton misconduct. I relied upon his

research and discussions I had with him concerning the difference between those two standards. My understanding of what people were trying to get at when they were dealing with the notion of gross negligence is something like the way the criminal negligence is defined in our criminal code and that is, the language they use, is a gross deviation from a standard of conduct that a reasonable person would observe under the condition. Gross deviation means, a deviation that is considerably greater than a lack of ordinary care, so, if the standard of negligence is ordinary care, the standard for gross negligence is considerably greater than the lack of ordinary care. It is still my assumption, based on Rep. Cobb's research, that wilful or wanton requires some sort of an intentional act and therefore places it higher than that. Now, I guess I'd like to go on and say this, if the committee decides it is going to change the standards back to wilful and wanton on the basis that there is really no difference between the two, then, I think that should be clearly stated in your minutes and on the record, so that if there is ever a dispute about that, we can go back to that record and make sure that it was the department's position that basically, the two are not different."

Rep. Grady asked Mr. England if he knew if the Trial Lawyers worked with the snowmobile people in drafting this language and Mr. England stated, "no". He further pointed out that the Trial Lawyers worked with them on a technical problem when the bill was in the Senate. He said, there was a problem on the 5th or 6th page in regards to a snowmobiler assuming all risks of the sport of snowmobiling and he was concerned that it may also apply in terms of product liability actions and the snowmobiler would assume the risk of his machine becoming balled up.

Rep. Grady asked Don Kiplin, Parts Division, Department of Fish, Wildlife and Parks, what difference this might make on grooming the trails. Mr. Kiplin stated there would be a financial impact to the snowmobile program if the department was held to a higher standard of care and judgements would reflect claims against the state's tort fund. The tort fund is supported by assessments to user agencies. Future claims that might result from the actions or inactions of the department in the snowmobile program would be paid by the snowmobile account and therefore would detract from the amount of work that could be done on the ground using those funds.

Rep. Mercer stated that it seemed the lawyer from the department was saying that it did not make a difference and Mr. Kiplin was saying it does make a big difference. Mr.

Kiplin pointed out that Mr. Lane was talking about the wilful and wanton amendment and that his discussion related to removing the department's reference in section 8, which appeared to create a higher responsibility for the department as opposed to the rest of the participants in the program, such as landowners and providers. Rep. Mercer asked him if he had any problem with the gross negligence standard since it is the same as the wilful and wanton, as far as he was concerned. Mr. Kiplin stated he would defer to Mr. Lane's judgment. Rep. Eudaily moved that the Judiciary Committee amendments made by the House be stricken from the bill. Rep. Addy explained that the department does not have any problems with the amendments except in section 8. He proposed that the words "the department" on page 6, line 5, be reinserted. Rep. Eudaily asked if gross negligence was in the bill at the present time. He stated that his point was, that the department's attorney said in all other areas where it talks about recreational use and wilful and wanton is used, if there is no difference, why not be consistent. Rep. Grady supported Rep. Eudaily's motion. He stated that the gross negligence part refers to private landowners under section 3. To be consistent with our present stream access and other liability issues regarding private landowners we should keep it consistent.

Rep. Bulger stated that section 3 applied to a private landowner if he was a snowmobile area operator. It is one thing to allow people to come onto your property to hunt, and another one to be a snowmobile operator with groomed trails.

Rep. Miles asked that the question be divided. She stated that she was getting tired of the fact that they have to define people's responsibilities based on how much it was going to cost the department or how much it was going to cost this and that. People of this state have a reasonable expectation to believe that state agencies are going to act not negligently, much less wilful or wanton. We have never gotten one guarantee from a single insurance company or liability carrier that this is going to make a difference. Chairman Lory pointed out that the motion should be divided on page 3 and on page 6. He asked that a voice vote be taken on the motion. The motion FAILED 8-8. Rep. Brown stated that if there was no difference in the department's opinion, why should they bother to change it. Rep. Eudaily stated that if they are going to divide it and if it should go, put the word department back in and gross negligence should be left on page 3. Rep. Eudaily moved that the motion be divided. Chairman Lory explained that the wording of gross negligence be returned to wilful and wanton misconduct. A voice vote was taken and the motion FAILED 8-8. The second part of the divided motion was to return

the word "department" to page 6, on line 5. A voice vote was taken and the motion CARRIED unanimously. Discussion continued with Rep. Mercer stating that this was a bill dealing with snowmobilers. Anytime the department is operating property under an agreement, then they are not making any guarantees that it is safe except to the extent of gross negligence. He stated he felt this was beyond the title of the bill. Rep. Mercer moved to amend page 6, line 2, inserting snowmobiling. (See amendments attached). Rep. Giacometto asked that clarification be made in regard to other outdoor activities. Rep. Mercer stated it is his understanding that if they own the land or lease the land, they are already covered. If they enter into an agreement to take care of the land which is not really a lease, then, they also want the comfort of this protection. This bill is an act to affect snowmobilers and does not have anything to do with other activities and there are other people who might have other concerns and that bothered him. Rep. Addy favored the motion. When there is a problem with the title being beyond the scope of the title, it is better to narrow the scope of the bill than to expand it, he said. Question was called and a voice vote was taken. The motion CARRIED unanimously. Rep. Grady moved that SB 139 BE CONCURRED IN AS AMENDED. Question was called on the bill. A voice vote was taken and the motion CARRIED unanimously. SB 139 BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 375: Rep. Addy moved the amendments of the subcommittee, on page 5, lines 3 and 4. (See amendments attached). Rep. Addy moved that SB 375 BE CONCURRED IN AS AMENDED. Rep. Gould asked Rep. Addy what exactly is happening on this. Rep. Addy asked Mr. Karl England to explain wrongful death. He explained that currently, when there is a death and a tort case, there is a possibility of bringing two cases to court, but in separate cases. One for the wrongful death of the person and one on behalf of the survivor of the person, and, there is a possibility of at least one area of damages where you can collect damages for the same thing in both cases. This bill says, when there is a death, the two cases have to be combined and you can only collect each measure of damages possible. Rep. Eudaily questioned Rep. Addy about taking the word "immediate" out of the title. Rep. Addy stated that was exactly correct. Rep. Addy also moved that amendment. Question was called and a voice vote was taken. The motion CARRIED unanimously. SB 375 BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 380: Rep. Addy moved the amendments of the subcommittee. He explained the amendments stating that the amendments go from an implied negligence theory to an actual notice theory. (See amendments

DAILY ROLL CALL

JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date 17 March 26, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)			✓
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

HOUSE

MARCH 26,

19 87

JUDICIARY

Speaker: We, the committee on

SENATE BILL NO. ~~XXX~~ 139

do pass
do not pass

☒ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

Eddie Long

Chairman

Strip

~~Strike~~ amendment number 3 (to page 6, line 5 of the third reading copy of SB 139) on the March 23, 1987, House Judiciary Committee report and further amend the third reading copy of SB 139 as follows:

1. Page 6, line 2.
Following: "recreational"
Insert: "snowmobiling"
Following: "opportunities"
Insert: ", including but not limited to a snowmobile area,"
2. Page 6, line 3.
Following: "property,"
Insert: "and when not also acting as a snowmobile area operator on the property,"

MAH

THIRD reading copy (BLUE)
color

REP. GRADY WILL CARRY THE BILL!

122

SENATE BILL NO. 139

INTRODUCED BY E. SMITH, CAMPBELL, TVEIT, KOLSTAD, NATHE,
HARDING, BECK, LYNCH, STIMATZ, MANNING, BOYLAN, NISBET,
MEYER, IVERSON, DONALDSON, SWIFT, O'CONNELL, KOEHNKE, HARP,
STRIZICH, QUILICI, PAVLOVICH, MILLER, MENAHAN, BRANDEWIE,
WALKER, HOFMAN, DAILY, RAMIREZ, POULSEN, PHILLIPS, STORY,

GRADY, HALLIGAN, THOFT, SEVERSON,

MCCORMICK, WALLIN, JACOBSON

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE
RESPONSIBILITY AND LIABILITY OF SNOWMOBILE AREA OPERATORS
AND THE RESPONSIBILITY AND RISK BORNE BY SNOWMOBILERS;
AMENDING SECTIONS 27-1-701 AND 70-16-302, MCA; AND PROVIDING
AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Purpose. The legislature
recognizes that there are inherent risks in the sport of
snowmobiling that are essentially impossible for a
snowmobile area operator to eliminate but that should be
known by a reasonable and prudent snowmobiler. The purpose
of [this act] is to define those areas of responsibility and
the acts for which a snowmobile area operator is liable for
death or injury to any person or property and those risks
for which a snowmobiler expressly assumes or must be

considered to have voluntarily assumed the risk of death or
injury and for which there can be no recovery.

NEW SECTION. Section 2. Definitions. As used in [this
act], the following definitions apply:

(1) "Snowmobile" means a vehicle defined in
23-2-601(10).

(2) "Snowmobile area" means those areas designated as
snowmobile trails or areas open to the operation of
snowmobiles.

(3) "Snowmobile area operators" means those persons
responsible for the maintenance of snowmobile trails and
open areas or those persons providing rental snowmobile
equipment. Operators may include but are not limited to the
United States forest service, the Montana department of
fish, wildlife, and parks, the Montana snowmobile
association, individual snowmobile clubs, LANDOWNERS OR
THEIR TENANTS, persons who offer snowmobile equipment for
rent, and private trail grooming contractors.

(4) "Snowmobiler" means any person operating or riding
a snowmobile.

NEW SECTION. Section 3. Snowmobile area operators --
duties -- restriction on liability. (1) The person
responsible for the maintenance of or operation of a
snowmobile area shall mark all trail maintenance vehicles
and furnish the vehicles with flashing or rotating lights

1 that must be in operation whenever the vehicles are working
2 or are in movement in the snowmobile area.

3 (2) A snowmobile area operator is liable for death or
4 injury to a snowmobiler or other person or property only for
5 an act or omission that constitutes ~~willful--or-wanton~~
6 ~~misconduct~~ GROSS NEGLIGENCE.

7 (3) Except as provided in this section, a snowmobile
8 area operator has no duty to eliminate, alter, control, or
9 lessen the risk inherent in the sport of snowmobiling. A
10 snowmobile area operator who attempts to eliminate, alter,
11 control, or lessen the risk inherent in the sport of
12 snowmobiling is liable only for an act or omission that
13 constitutes ~~willful--or-wanton-misconduct~~ GROSS NEGLIGENCE.

14 NEW SECTION. Section 4. Snowmobiler's assumption of
15 responsibility -- duties. (1) A snowmobiler assumes the risk
16 and all legal responsibility for death or injury to himself
17 or other persons or property that results from participating
18 THE RISKS INHERENT in the sport of snowmobiling ~~by-virtue-of~~
19 ~~his--participation~~. The assumption of risk includes but is
20 not limited to death or injury caused by the following:
21 variations in terrain, surface or subsurface snow or ice
22 conditions, cornices, avalanches, poor visibility, bare
23 spots, rocks, trees, other forms of forest growth or debris,
24 and plainly marked trail maintenance equipment.

25 (2) A snowmobiler is responsible for:

1 (a) knowing the range of his own ability to snowmobile
2 any slope, trail, or area and for snowmobiling within the
3 limits of his ability considering the conditions;

4 (b) maintaining control of his speed and course at all
5 times while snowmobiling;

6 (c) heeding all posted warnings; and

7 (d) refraining from acting in a manner that may cause
8 or contribute to the injury of anyone.

9 (3) THE PROVISIONS OF THIS SECTION DO NOT AFFECT A
10 PRODUCTS LIABILITY CAUSE OF ACTION BASED UPON THE DESIGN OR
11 MANUFACTURE OF SNOWMOBILE EQUIPMENT OR PRODUCTS OR SAFETY
12 EQUIPMENT USED INCIDENTAL TO THE OPERATION OF A SNOWMOBILE.

13 NEW SECTION. Section 5. Maintenance of rental
14 snowmobiles. A person who engages in the business of renting
15 snowmobiles to another shall:

16 (1) maintain rental snowmobiles in a safe condition;

17 AND

18 (2) offer each renter instructions in the MECHANICAL
19 operation of the rental snowmobile; ~~and~~

20 ~~{3}--make-available-to-each-renter-maps-or--information~~
21 ~~on-trails-in-the-area.~~

22 NEW SECTION. Section 6. Effective EFFECT OF
23 comparative negligence. Notwithstanding any comparative
24 negligence law in this state, a person is barred from
25 recovery from a snowmobile area operator for death or injury

to person or property resulting from any risk inherent in the sport of snowmobiling as described in [section 4].

Section 7. Section 27-1-701, MCA, is amended to read:

"27-1-701. Liability for negligence as well as willful acts. Everyone Except as otherwise provided by law, everyone is responsible not only for the results of his willful acts but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person except so far as the latter has willfully or by want of ordinary care brought the injury upon himself."

Section 8. Section 70-16-302, MCA, is amended to read:

"70-16-302. Restriction on liability to permittee. (1) A landowner or tenant who permits, by act or implication, any person to enter upon any property in the possession or under the control of such landowner or tenant for any recreational purpose without accepting a valuable consideration therefor does not by granting such permission extend any assurance that such property is safe for any purpose or confer upon such a person the status of invitee or licensee to whom any duty of care is owed, and such landowner or tenant shall not be liable to such person for any injury to person or property resulting from any act or omission of such landowner or tenant unless such act or omission constitutes willful or wanton misconduct.

(2) The department of fish, wildlife, and parks, when

operating under an agreement with a landowner OR TENANT to provide recreational SNOWMOBILING opportunities, INCLUDING BUT NOT LIMITED TO A SNOWMOBILE AREA, subject to the provisions of subsection (1) on the landowner's property, AND WHEN NOT ALSO ACTING AS A SNOWMOBILE AREA OPERATOR ON THE PROPERTY, does not extend any assurance that such property is safe for any purpose, and the department, THE LANDOWNER, OR THE LANDOWNER'S TENANT may not be liable to any person for any injury to person or property resulting from any act or omission of the department unless such act or omission constitutes willful or wanton misconduct."

NEW SECTION. Section 9. Two-thirds vote required. Since this act limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house for passage.

NEW SECTION. Section 10. Effective date. This act is effective on passage and approval.

-End-